

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

v.

HERBERT CLIFTON HECTOR,

Defendant.

CRIMINAL FILE NO.

1:12-CR-183-1-TWT

ORDER

This is a criminal case. It is before the Court on the Report and Recommendation [Doc. 169] of the Magistrate Judge recommending denying the Defendant's Motion to Vacate Sentence [Doc. 160]. The Defendant objects to the Report and Recommendation and claims that the letter of Victoria Calvert attached as Exhibit E to his motion constitutes an admission of ineffective assistance by trial counsel. The objection has no merit. First, an admission by Ms. Calvert is not binding on the Government or the Court. Second, Ms. Calvert did not admit to ineffective assistance of counsel. She merely informed the Defendant of the procedure by which he could make that claim. Third, Ms. Calvert had no basis for objecting to the jury charge or the verdict form. As the Eleventh Circuit noted in the Defendant's direct appeal, the jury was instructed that the charges for which the

Defendant was on trial were the charges specified in the Indictment. Certainly, the Government was sloppy in charging a conspiracy to commit armed bank robbery and then requesting only a general conspiracy charge, but there was nothing erroneous in the charge that was given. If either the Government or the Defense had objected to the omission of the word “armed” as a clarification of the means used to commit the bank robbery as alleged in the Indictment, the Court would have modified the verdict form and the conspiracy instruction and the result would have been exactly the same as to both the convictions and the sentence. The Defendant has failed to show either prong of the *Strickland* standard for ineffective assistance of trial counsel and of appellate counsel. For the reasons set forth in the Report and Recommendation, the Defendant is granted a Certificate of Appealability as to the issue of whether trial counsel rendered ineffective assistance of counsel for failing to object to the verdict form and the omission of “armed bank robbery” in the conspiracy instruction.

SO ORDERED, this 12 day of July, 2019.

/s/Thomas W. Thrash
THOMAS W. THRASH, JR.
United States District Judge